



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2016-0467]

RIN 1625-AA00

Safety Zone; Tennessee River 385.0-387.0; Scottsboro, AL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone for all waters of the Tennessee River beginning at mile marker 385.0 and ending at mile marker 387.0. This safety zone is necessary to protect persons, property, and infrastructure from potential damage and safety hazards associated with the demolition of the B.B. Comer Bridge. This rulemaking would prohibit persons and vessels from entering the safety zone area unless authorized by the Captain of the Port Ohio Valley or a designated representative.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until August 1, 2016. For the purposes of enforcement, actual notice will be used from May 31, 2016 until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2016-0467 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Ashley Schad, MSD Nashville, Nashville, TN, at 615-736-5421 or at Ashley.M.Schad@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On May 27, 2016, the Contract Drilling and Blasting representative submitted a CG-4260 to the Coast Guard for blasting operations that would take place from May 31, 2016 to August 1, 2016 during the demolition of the B.B. Comer Bridge on the Tennessee River at mile marker 386.0. The blasting operations will take place at various times and dates determined by environmental factors. The Captain of the Port Ohio Valley (COTP) has determined that this safety zone is necessary to protect persons, property, and infrastructure before, during, and after blasting operations.

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard was informed of this project in early

May, but full details of blasting operations on or over a Navigable Waterway were not provided until May 27, 2016 with a start date of May 31, 2016. The notification of blasting requirements were made only a few days before the project is scheduled to begin. Immediate action is needed to respond to potential safety hazards related to blasting operations on or over this navigable waterway. It is impracticable to publish an NPRM because we must establish this safety zone by May 31, 2016.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because immediate action is needed to establish a safety zone to protect persons, property, and infrastructure whenever blasting operations take place on the B.B. Comer Bridge from May 31, 2016 until August 1, 2016.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Ohio Valley (COTP) has determined the need to protect persons, property, and infrastructure during the blasting operations taking place on the B.B. Comer Bridge on the Tennessee River at mile marker 386.0. This rule is needed to protect personnel, vessels, and these navigable waters before, during, and after blasting operations take place.

IV. Discussion of the Rule

The Captain of the Port Ohio Valley is establishing this safety zone from May 31, 2016 through August 1, 2016, for all waters of the Tennessee River beginning at mile marker 385.0 and ending at mile marker 387.0. The periods of enforcement will be 30 minutes prior to, during, and 30 minutes after any blasting operation that takes place on the B.B. Comer Bridge. The Coast

Guard was informed that there would be between 9 and 12 blasting operations that will take place during daylight hours and will last approximately one hour on each occurrence. Safety zone enforcement times will be announced via Broadcast Notice to Mariners (BNM), Local Notices to Mariners (LNM), or through other public notice and at least 12-24 hour notice will be provided before each enforcement period. Any deviation from this rule are prohibited unless specifically authorized by the COTP Ohio Valley, or a designated representative. Deviations requests will be considered and reviewed on a case-by-case basis. The COTP Ohio Valley may be contacted by telephone at 1-800-253-7465 or can be reached by VHF-FM channel 16.

The duration of each safety zone enforcement period is intended to protect persons, property, and infrastructure from safety hazards associated with blasting operations. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are establishing appears at the end of this document.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive order related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under Executive Order 12866.

Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone.

This safety zone prohibits transit on the Tennessee River from mile 385.0 to mile 387.0, 30 minutes prior to, during, and 30 minutes after blasting operations on the B.B. Comer bridge from May 31, 2016 through August 1, 2016. Broadcast Notices to Mariners and Local Notices to Mariners will also inform the community of the safety zone enforcement periods through BNM, LNM and other forms of public notice so that they may plan accordingly for each short enforcement period restricting transit. Vessel traffic may request permission from the COTP Ohio Valley or a designated representative to enter the restricted area.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone area may be small entities, for the reasons stated in section V.A above this rule would not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule

would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal

Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves area safety zone that would prohibit entry to unauthorized vessels. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the U. S. Coast Guard amends 33 CFR part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231.

2. A new temporary § 165.35T08-0467 is added to read as follows:

§ 165.35T08-0467 Safety Zone; Tennessee River Mile 385.0 to 387.0 Scottsboro, AL.

(a) **Location.** All waters of the Tennessee River beginning at mile marker 385.0 and ending at mile marker 387.0 Scottsboro, AL.

(b) **Effective date.** This rule is effective from May 31, 2016 through August 1, 2016.

(c) **Periods of Enforcement.** This rule will be enforced from 30 minutes prior to and 30 minutes after all blasting operations on the B.B. Comer Bridge. The Captain of the Port Ohio Valley or a designated representative will inform the public through Broadcast Notice to Mariners (BNM), Local Notices to Mariners (LNM), or through other public notice and at least 12-24 in advance of each enforcement period.

(d) Regulations.

(1) In accordance with the general regulations in §165.23 of this part, entry into this area is prohibited unless authorized by the Captain of the Port Ohio Valley or a designated representative.

(2) Persons or vessels requiring entry into or passage through the area must request permission from the Captain of the Port Ohio Valley or a designated representative. U. S. Coast Guard Sector Ohio Valley may be contacted on VHF Channel 13 or 16, or at 1-800-253-7465.

Dated: May 31, 2016

R. V. TIMME
Captain, U. S. Coast Guard
Captain of the Port Ohio Valley

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